

To: Charles W. Phillips, Director
James M. Cooper, Deputy Director

From: J. Philip Goddard, Chief Counsel and Deputy Director

Date: August 4, 2003

Re: **Corporate Name**

The current environment and degree of interstate banking activity has created inquiry as to the application of IC 28-12-3-2 as it relates to IC 28-1-22-3. This statute governs the same or confusingly similar corporate names of banking institutions. For in-state institutions, it is the governing statute for the use of bank names at the initial formation of the bank. In the past, the department could easily regulate the establishment of a new bank's name, as not being the same as or similar to another, because these problems would be resolved in the formation and chartering approval process.

However, the level of activity of interstate banking activity into Indiana by already established and chartered out-of- state banks has created an unintended consequence. IC 28-1-22-3 states:

A foreign corporation shall not use or assume a name which could not be taken by a domestic corporation under the provisions of IC 28-12-3.

The department can readily assure itself that there are no same or similar named banking institutions among domestic institutions. This is because it participates in the approval of the name of new institutions at the formation stage. However, out- of- state institutions wanting to make entry into Indiana would more than likely have a higher probability of already having a name that is the same or similar to a name already chosen or being utilized by an Indiana bank. In the states surrounding Indiana imagine the number of Farmers Banks, Merchant Banks, or Union Banks that are in existence. Does this mean that if there are Farmers Banks or Merchants Banks or Union Banks in Indiana, that entry into Indiana is prohibited by those surrounding state banks with the same or confusingly similar names?

There has been considerable effort taken by Congress and the various state legislatures to create an environment for banking that is truly interstate in nature. Any statute that impedes or prohibits such intent would be contrary to what was trying to be established. Therefore, a liberal interpretation of our statutes is merited to satisfy what was intended.

ISSUE: What comprises the corporate name of an out-of-state bank?

POSITION: For purposes of the application of IC 28-1-22-3 relating to foreign corporations, the department will consider the corporate name of an institution as information that can be

derived from the articles of corporation of a chartering state that identifies the name, city and state of the banking institution. If there is a Farmers Bank organized in Cincinnati, Ohio, the department shall consider the corporate name of such institution, for purposes of IC 28-1-22-3, to be the Farmers Bank of Cincinnati, Ohio.